

MOTION FOR POST CONVICTION COLLATERAL RELIEF

<p>COMMONWEALTH OF PENNSYLVANIA VS</p> <p><u>TEYSHAUNT LOVE</u></p> <p>(Name of Defendant)</p>	<p>COURT AND DOCKET NUMBERS</p> <p>937CR02</p> <p>To be completed by Clerk of Court</p>
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NOTE: List below those informations or indictments & offenses for which you have not completed your sentence.

INFORMATION OR INDICTMENT NUMBERS:

CP-22-CR-937-2002

I WAS CONVICTED OF THE FOLLOWING CRIMES:

Third degree murder

RECEIVED
OFFICE OF
CLERK OF COURTS
2009 FEB 24 PM 2:47
DAUPHIN COUNTY
PENNA

1. MY NAME IS:

TYSHAUNT LOVE

2. I AM NOW

- (a) ☐ On Parole (b) ☐ On Probation (c) ☒ Confined in SCI-Huntingdon
(d) ☐ Residing at _____

3. I WAS SENTENCED ON October 28, 2005, 2 _____ TO A TOTAL TERM
OF 15 to 30 yrs., COMMENCING ON September 20, 2005, 2 _____ BY
JUDGE(S) Honorable Bruce F. Bratton, Judge

FOLLOWING A: ☒ Trial by jury ☐ Plea of Guilty
☐ Trial by a judge without a jury ☐ Plea of nolo contendere
I am ☐ Serving ☐ Waiting to serve The Sentence Imposed

4. I AM ELIGIBLE FOR RELIEF BECAUSE OF:

- ☒ (I) A violation of the Constitution of this Commonwealth or the Constitution or laws of the United States which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- ☒ (II) Ineffective assistance of counsel which, in the circumstances of the particular case, so undermined the truth-determining process that no reliable adjudication of guilt or innocence could have taken place.
- ☐ (III) A plea of guilty unlawfully induced where the circumstances make it likely that the inducement caused the petitioner to plead guilty and the petitioner is innocent.
- ☒ (IV) The improper obstruction by government officials of the petitioner's right of appeal where a meritorious appealable issue existed and was properly preserved in the trial court.
- ☐ (V) The unavailability at the time of trial of exculpatory evidence that has subsequently become available and would have changed the outcome of the trial if it had been introduced.
- ☒ (VI) The imposition of a sentence greater than the lawful maximum.
- ☐ (VII) A proceeding in a tribunal without jurisdiction.

5. THE FACTS IN SUPPORT OF THE ALLEGED ERROR(S) UPON WHICH THIS MOTION IS BASED ARE AS FOLLOWS: (State facts clearly and fully; argument, citations, or discussions of authorities shall not be included.)

(A) I know the following facts to be true of my own personal knowledge:

1.) Trial Court Error where the court denied petitioner's motion to dismiss the charge pursuant to Pa.R.Crim. P. 600 where the commonwealth took more than 365 days to bring petitioner to trial. 2.) Trial Court Error, the court erred when it allowed the commonwealth to introduce the preliminary hearing testimony of a material witness, Guillemina Cruz, when the witness failed to appear for trial? 3.) The trial court erred when it denied petitioner's Motion to introduce prior record testimony regarding a prior bad act of Laquann Williams, aka KAZAR, who the petitioner alleged was the real perpetrator of the crime. 4.) The Trial Court Erred when it denied petitioner's motion for a Modification of Sentence, where said sentence was beyond the aggravated range of sentencing guidelines applicable at the time of the crime's commission.

(B) The following facts were made known to me by means other than my own personal knowledge (Explain how and by whom you are informed):

Inmate paralegal, and my own personal research in the law library

(C) In the event my appeal is allowed as requested under #4, the following are the matters which I intend to assert on that appeal (Specify the matters to be asserted if appeal is allowed)

this is petitioner's first pcra petition and any issue preserved within this Pcra Petition will be the issues he raise on any appeals therefrom.

6. SUPPORTING EXHIBITS

(A) In support of this motion I have attached as exhibits:

☐ Affidavits [Exhibit(s) No. _____]

☐ Records [Exhibit(s) No. _____]

☐ Other Supporting Evidence [Exhibit(s) No. _____]

(B) I have not attached any affidavits, records or other supporting evidence because

7. I HAVE TAKEN THE FOLLOWING ACTION(S) TO SECURE RELIEF FROM MY CONVICTION(S) OR SENTENCE(S):

(A) Direct Appeal (IF "YES," name the court(s) to which appeal(s) was/were taken, date, term and number, and result.)

☒ YES ☐ NO

~~THE Superior Court of Pa. No. 198 Middle District Appeal 2006~~

~~The Supreme Court Allowance of Appeal filed June 7, 2007,~~

(B) Previous proceedings in the courts of the Commonwealth of Pennsylvania

☐ YES ☒ NO

(IF "YES," name the type of proceedings (such as habeas corpus, etc.) – including former proceedings under the Post Conviction Hearing Act the Court(s) in which petition(s) was/were filed, date, term and number, and result, including all appeals.)

(C) Habeas Corpus or other petitions in Federal Courts

☐ YES ☒ NO

(IF "YES," name the district in which petition(s) was/were filed, date(s), Court Number – civil action or miscellaneous, and result, including all appeals.)

(D) Other legal proceedings

☐ YES ☒ NO

(IF "YES," give complete details – type of action, court in which filed, date, term and number, and result, including all appeals.)

8. FOLLOWING MY ARREST, I WAS REPRESENTED BY THE FOLLOWING LAWYER(S): (Give the lawyer's name and the proceeding at which he/she represented you.)

Mr. James H. Roland, Esq., Prelim. Her. James Russo, Esq. at continuation Prelim.

Her., Monty Batson, Esq. at the Third(3rd.) Prelim. Her., Mr. Paul Muller, Esq.

Represented my behalf at Trial.

9. I PREVIOUSLY CHALLENGED MY CONVICTION IN THE FOLLOWING COURTS:

Court	Caption	Term Number	Attorney	Relief Requested
Superior Court, Dir. Appeal,		No. 0937 CR 2002	Paul Muller, Esq.	New Trial
Supreme Court, Alloc. Pet.		No. XXXXXXXXXXXX		
Supreme Court, Alloc. Pet.		No. 445 Mal 2007	Paul Muller, Esq.	New Trial

10. THE ISSUES WHICH I HAVE RAISED IN THIS MOTION HAVE NOT BEEN PREVIOUSLY LITIGATED OR ONE OF THE FOLLOWING APPLIES:

- ☐ (I) The allegation of error has not been waived.
- ☒ (II) If the allegation of error has been waived, the alleged error has resulted in the conviction or affirmation of sentence of an innocent individual.

The failure to litigate this issue(s) prior to or during trial or on direct appeal could not have been the result of any rational, strategic, or tactical decision by counsel.

11. BECAUSE OF THE FOREGOING REASONS, THE RELIEF WHICH I DESIRE IS:

- (A) ☒ Release from custody and discharge
- (B) ☒ A new trial
- (C) ☒ Correction of Sentence
- (D) ☐ Other Relief (Specify): _____

12. I request an evidentiary hearing. I certify, subject to the penalties for unsworn falsification to authorities set forth at 18 Pa.C.S. § 4904, that the following persons will testify to the matters stated. I have attached to this petition all documents material to the witness' testimony.

Witness Name: _____

Witness Address: _____

Witness Date of Birth: _____

Witness Testimony: _____

Witness Name: _____

Witness Address: _____

Witness Date of Birth: _____

Witness Testimony: _____

Witness Name: _____

Witness Address: _____

Witness Date of Birth: _____

Witness Testimony: _____

Witness Name: _____

Witness Address: _____

Witness Date of Birth: _____

Witness Testimony: _____

13. Based upon the exceptional circumstances set forth below, I request that the District Attorney produce the following documents:

14. I ask that the Court consider the following argument, citation and discussion of authorities:

15.

(A) I am ☐ ABLE ☒ NOT ABLE to pay the cost of this proceeding.

I have \$ \$ 12.23 in my prison account.

(B) My other financial resources are:

16. (A) ☒ I do not have a lawyer and I am without financial resources or otherwise unable to obtain a lawyer.

(1) ☒ I request the court to appoint a lawyer to represent me.

(2) ☐ I do not want a lawyer to represent me.

(B) ☐ I am represented by a lawyer. (Give name and address of your lawyer.)

Richard Love
(Signature of Defendant)

UNSWORN DECLARATION

I, Tyshaunt Love do hereby verify that
the facts set forth in the above motion are true and correct
to the best of my personal knowledge or information and
belief, and that any false statements herein are made sub-
ject to the penalties of Section 4904 of the Crimes Code
(18 Pa. C.S. § 4904), relating to unsworn falsification to
authorities.

No Notary
Required


(Signature of Defendant)

Date Petition served on Prison Staff for mailing to the clerk of Court's
February 13, 2009

COMMONWEALTH OF PENNSYLVANIA VS <div style="border-top: 1px solid black; padding-top: 5px;"> <small>DEFENDANT'S NAME</small> (Name of Defendant) </div>	IN THE CRIMINAL COURTS OF THE COUNTY OF <div style="border-top: 1px solid black; height: 15px; margin-top: 5px;"></div> Criminal Action No. _____ of _____ 2 _____
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ORDER

AND NOW this _____ day of _____, 2____ Upon consideration of the foregoing motion:

1. <input type="checkbox"/> The motion is returned to defendant for amendment as follows, such amendment to be made on or before <div style="border-top: 1px solid black; width: 40%; margin-left: 100px;"></div>
2. <input type="checkbox"/> A rule is granted upon the Commonwealth of Pennsylvania to show cause why a hearing should not be granted. The rule is returnable on or before _____ 2____
3. <input type="checkbox"/> The request to proceed as a poor person, without the payment to costs, is <input type="checkbox"/> granted <input type="checkbox"/> denied.
4. <input type="checkbox"/> Upon finding that defendant is unable to obtain a lawyer _____ Esq., is appointed to represent him/her.
5. <input type="checkbox"/> The Clerk of Court is ordered and directed to do the following forthwith: <div style="margin-left: 20px;"> (a) To serve a copy of this motion and this order upon the District Attorney of _____ County. (b) To send a copy of this motion and this order to _____ Esq., the lawyer for the defendant. (c) To send a copy of this order to the defendant. </div>
6. <input type="checkbox"/>